

# Memo

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March 16, 2005

TO: Planning Commission

FROM: Elizabeth La Fleur, Director, Lower Keys Planning Team

RE: Interim Development Ordinance-Marine Facilities and Working Waterfronts

PLANNING COMMISSION MEETING DATE: 3/23/05

## Summary

The Board of County Commissioners (BOCC) at a regular meeting on January 19, 2005, directed Growth Management staff to prepare an Interim Development Ordinance (IDO) deferring the acceptance of applications for redevelopment and conversion of marine facilities including commercial marinas and the working waterfront (boatyards, wet and dry storage, fish houses and commercial fishing vessel dockage) while staff prepares amendments to the 2010 Comprehensive Plan and Land Development Regulations (LDR). Concurrently, following direction of the BOCC at the same regular meeting on January 19, 2005, Growth Management staff immediately undertook the development of this Interim Development Ordinance and preparation of a contract for the development of a public water access and marine facilities plan and implementation measures including 2010 Comprehensive Plan and Land Development Regulations.

This IDO provides for specific exemptions and clarifying definitions. The IDO is to expire within 365 days from date of adoption, or when the 2010 Comprehensive Plan and LDR amendments become effective, whichever comes first.

## Background

Monroe County is experiencing the loss of and redevelopment of marine facilities and the working waterfront including commercial marinas, boatyards, wet and dry storage, fish houses and commercial fishing vessel dockage, at an unprecedented rate. A number of waterfront owners are exploring the possible change of use of their property, to private residential uses and private exclusive use of dockage which will further decrease the public access and working waterfront usages. There is great concern that if nothing is done to control this redevelopment that future losses of waterfront facilities will negatively affect the economy and bring an end to critical marine services (e.g. boatyards), commercial marinas that are available to the public and traditional trades associated with commercial fishing and other water-dependent uses. The pressure to redevelop waterfront properties to non-water related or non-water dependent type uses is such that unless acceptance of such applications is deferred, there is not time to write land development regulations or Comprehensive Plan amendments to adequately address the probable negative impacts of the rapid rate of change.

The County does not have an accurate inventory of pertinent waterfront facility locations and specific waterfront uses and a thorough understanding of the socio-economic data on existing waterfront marine facilities. However, the County recognizes the need to develop comprehensive plan and land development regulations and programs to preserve marine facilities including commercial marinas and the working waterfront. A “no net loss” of public access to the waterfront policy was discussed by the BOCC at their December 16, 2004, meeting. To meet these needs, the Board of County Commissioners, at their meeting of August 18, 2004, directed staff to have a public water access and marine facilities plan prepared for Monroe County. At their meeting of January 19, 2005, the BOCC voted to contract with the South Florida Regional Planning Council to prepare the public water access and marine facilities plan and implementation measures including Comprehensive Plan and Land Development Regulation amendments.

The contract to prepare the plan and implementation measures is further substantiated by Goal 212 of the 2010 Comprehensive Plan which directs the County to prioritize shoreline land uses and establish criteria for shoreline development in order to preserve and enhance coastal resources and to ensure the continued economic viability of the County; Goal 213 of the 2010 Comprehensive Plan which directs the County to ensure adequate public access to the beach or shoreline; and Objective 502.1 of the 2010 Comprehensive Plan which direct the County to promote the preservation and enhancement of the existing ports and port related activities.

This proposed deference of accepting applications is to provide time for the preparation of the public water access and marine facilities plan and implementation measures by the South Florida Regional Planning Council. This IDO will also provide time for staff to draft the necessary Land Development Regulations and 2010 Comprehensive Plan amendments, the Planning Commission to review the proposed changes and the public time to consider, understand and comment on the amendments.

Redevelopment and conversion of existing uses and structures, as used in this ordinance, includes the following:

- Any change of use from a water dependent use to a water enhanced or a non-water dependent use of a commercial marina.
- Any division of uplands and/or bay bottom of existing marine facilities into individual parcels regardless of type of ownership.
- Any modification, improvements or expansions of existing marine facilities resulting in loss of public access from both land and water to the waterfront and water body.
- Any change of use of the working waterfront to a commercial marina or a non-water dependent use.

The following definitions apply in this ordinance:

- Existing uses and structures means those uses and structures in existence prior to and including February 28, 2005.
- Commercial marina means a facility with three or more slips for the mooring, berthing, storing or securing of watercraft and may include accessory retail and service uses, but not including docks accessory to land based dwelling units or individual berths under private ownership.
- Marine facility means commercial marinas, the working waterfront, and any other public access point including boat ramps that provide public access to the navigable waters of the state.
- Public access means the ability of members of the public to physically reach, enter or use a water-body by either land or water.
- Working waterfront means a parcel or parcels of real property that provide access for water dependent boatyards, wet and dry storage, fish houses (fish landings, processing and packaging) and commercial fishing vessel dockage, it does not mean commercial marinas for the dockage of pleasure craft.
- Water dependent use means a use or portions of a use that can only be carried out on, in or adjacent to water areas because the use requires access to the water body.
- Water enhanced use means a use that is not a water dependent use but benefits economically or aesthetically by its location on the waterfront, examples include restaurants, hotels and residential uses.

The following exemptions are provided in this ordinance:

- Exempt from this ordinance is development under an approved Conditional Use Permit, general maintenance, repair and/or safety improvements.
- Any application for a building permit or development approval with a submittal date of February 28, 2005 or earlier shall be exempt from this Interim Development Ordinance.

Until expiration of this Interim Development Ordinance, no building permit application or planning approval for any development or redevelopment that meets the criteria as used in this ordinance, shall be granted pursuant to an application or request with a submittal date of March 1, 2005, or later. This ordinance shall not be construed to prohibit the issuance of a building permit or planning approval for any development or redevelopment that does not meet the criteria for review identified as “redevelopment” or “conversion” as used in this ordinance that is allowed pursuant to the Monroe County Land Development Regulations and the 2010 Comprehensive Plan.

As of the effective date of the ordinance, no building permit application or development approval meeting the criteria for review identified as “redevelopment” or “conversion” as used in this ordinance, shall be accepted or processed by the Growth Management Division, except applications exempt hereunder and development awarded a vested rights determination pursuant to the following:

Any property owner adversely affected by the provisions of this Interim Development Ordinance may seek a determination that the owner’s proposed development or redevelopment is vested against the provisions of this Interim Development Ordinance, by filing with the Director of Growth Management, together with an administrative fee in the amount of \$400, a vested rights application setting forth facts establishing the applicant met, prior to the date that this ordinance is adopted by the Board of Monroe County Commissioners, the vested rights standards set forth in Section 9.5-181, Monroe County code. Such application must be filed no later than sixty (60) days after the effective date of this ordinance.

Since the Development Review Committee approval of the ordinance, Staff is proposing the following modifications:

**Section 7:** Replace the phrase “...no building permit application or planning approval” to read: “...no application for a building permit or development approval...”

**Section 10:** Replace the phrase “...prohibit the issuance of a building permit or planning approval...” to read: “prohibit application for, or the issuance of a building permit or development approval...”

**Section 17:** Replace the phrase “public access to marine facilities.” to read “...public access and marine facilities.”

These modifications are reflected in the attached Interim Development Ordinance, with the footer dated March 16, 2005.

### **Staff Recommendation**

Staff recommends that the Planning Commission recommend approval to the Monroe County Board of County Commissioners the attached Interim Development Ordinance, with the modifications as stated above, deferring the acceptance of development applications for the redevelopment and conversion of marine facilities including commercial marinas and the working waterfront until land development regulations and comprehensive plan amendments are drafted; providing for exemptions and providing for expiration within 365 days or when the 2010 Comprehensive Plan and LDR amendments become effective, whichever comes first.

cc: Timothy J. McGarry, Director of Growth Management  
K. Marlene Conaway, Director of Planning and Environmental Resources  
Kerry Willis, Esquire  
Elizabeth La Fleur, Director, Lower Keys Planning Team  
David Dacquisto, Director, Upper Keys Planning Team

**ORDINANCE NO. 2005**

**AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AN INTERIM DEVELOPMENT ORDINANCE DEFERRING THE ACCEPTANCE OF DEVELOPMENT APPLICATIONS FOR THE REDEVELOPMENT AND CONVERSION OF MARINE FACILITIES INCLUDING COMMERCIAL MARINAS AND THE WORKING WATERFRONT UNTIL LAND DEVELOPMENT REGULATIONS AND COMPREHENSIVE PLAN AMENDMENTS ARE DRAFTED; PROVIDING FOR EXEMPTIONS; PROVIDING FOR TRANSMITTAL TO FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS (DCA); AND PROVIDING FOR EXPIRATION WITHIN 365 DAYS OR WHEN THE AMENDMENTS BECOME EFFECTIVE, WHICHEVER COMES FIRST.**

**WHEREAS**, the Board of County Commissioners at their meeting of August 18, 2004, directed staff to have a public water access and marine facilities plan prepared for Monroe County; and,

**WHEREAS**, the Board of County Commissioners discussed a “No Net Loss” of public access to the waterfront policy at their December 16, 2004 meeting; and

**WHEREAS**, Monroe County is experiencing the loss of and redevelopment of marine facilities including commercial marinas and the working waterfront including boatyards, wet and dry storage, fish houses and commercial fishing vessel dockage at an unprecedented rate; and

**WHEREAS**, there is great concern that if nothing is done to control this redevelopment that future losses of waterfront facilities will negatively affect the economy and bring an end to critical marine services (e.g. boat yards), commercial marinas that are available to the public and traditional trades associated with commercial fishing; and

**WHEREAS**, a number of waterfront owners are exploring the possible change of use of their property to private residential uses and private exclusive use of dockage which will further decrease the public access and/or working waterfront; and

**WHEREAS**, Goal 212 of the 2010 Comprehensive Plan directs the County to prioritize shoreline land uses and establish criteria for shoreline development in order to preserve and enhance coastal resources and to ensure the continued economic viability of the County; and

**WHEREAS**, Goal 213 of the 2010 Comprehensive Plan directs the County to ensure adequate public access to the beach or shoreline; and

**WHEREAS**, Objective 502.1 of the 2010 Comprehensive Plan directs the County to promote the preservation and enhancement of the existing ports and port related activities; and

**WHEREAS**, the County does not have an accurate inventory of pertinent waterfront facility locations and specific waterfront uses and a thorough understanding of the socio-economic data on existing waterfront marine facilities; and

**WHEREAS**, the County recognizes the need to develop comprehensive plan and land development regulations and programs to preserve marine facilities including commercial marinas and the working waterfront; and

**WHEREAS**, the Board of County Commissioners at their meeting of January 19, 2005, voted to contract with the South Florida Regional Planning Council to prepare the public water access and marine facilities plan and implementation measures including Comprehensive Plan

and Land Development Regulations; and

**WHEREAS**, the County has committed necessary staff and resources to the development of these policies and regulations; and

**WHEREAS**, the utilization of the moratorium device as a temporary measure to facilitate government decision making, study and adoption of comprehensive plan and land development regulations is a legitimate governmental tool to facilitate logical and considered growth and as a means of avoiding inefficient and ill-conceived development; and

**WHEREAS**, the County finds that it is necessary to enact an Interim Development Ordinance deferring the acceptance of development applications that seek development approval for the redevelopment of waterfront properties; and

**WHEREAS**, Chapter 125, F.S. authorizes the Board of County Commissioners to adopt ordinances to provide standards protecting against imminent and immediate threat to the health, safety and welfare of the citizens of Monroe County; and

**WHEREAS**, this Interim Development Ordinance constitutes a valid exercise of the County's police power and is otherwise consistent with Section 163.316, *et seq.*, F.S., which, *inter alia*, encourages the use of innovative land development regulations including provisions like moratoria to implement the adopted comprehensive plan; and

**WHEREAS**, the Board of County Commissioners at a regular meeting on January 19, 2005, directed staff to prepare an ordinance deferring acceptance of applications for redevelopment of marine facilities including commercial marinas and the working waterfront (boatyards, wet and dry storage, fish houses and commercial fishing vessel dockage) while staff prepares amendments to the 2010 Comprehensive Plan and Land Development Regulations; and

**WHEREAS**, following direction of the Board of County Commissioners, the Growth Management staff immediately undertook the development of this Interim Development Ordinance and preparation of a contract for the development of a public water access and marine facilities plan and implementation measures including Comprehensive Plan and Land Development Regulations; and

**WHEREAS**, the Planning Commission has reviewed the draft Interim Development Ordinance and recommended approval to the Board of County Commissioners; and

**WHEREAS**, the Board of County Commissioners has reviewed and considered the draft Interim Development Ordinance recommended by the Planning Commission and Planning staff; and

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:**

**Section 1.** The purpose and intent of this Interim Development Ordinance is in accordance with the Board of County Commissioners' directive of January 19, 2005, to prepare an interim development ordinance to prevent further redevelopment and conversion of marine facilities including commercial marinas and the working waterfront, to implement a policy of "No-Net-Loss" of public access to marine facilities while legislation is being prepared.

**Section 2.** Redevelopment and conversion of existing uses and structures, as used in this ordinance, includes the following:

- Any change of use from a water dependent use to a water enhanced or a non-water dependent use of a commercial marina.
- Any division of uplands and/or bay bottom of existing marine facilities into individual parcels regardless of type of ownership.
- Any modification, improvements or expansions of existing marine facilities resulting in loss of public access from both land and water to the waterfront and waterbody.
- Any change of use of the working waterfront to a commercial marina or a non-water dependent use.

**Section 3.** The following definitions apply in this ordinance:

- Existing uses and structures means those uses and structures in existence prior to and including February 28, 2005.
- Commercial marina means a facility with three or more slips for the mooring, berthing, storing or securing of watercraft and may include accessory retail and service uses, but not including docks accessory to land based dwelling units or individual berths under private ownership.
- Marine facility means commercial marinas, the working waterfront, and any other public access point including boat ramps that provide public access to the navigable waters of the state.
- Public access means the ability of members of the public to physically reach, enter or use a water-body by either land or water.
- Working waterfront means a parcel or parcels of real property that provide access for water dependent boatyards, wet and dry storage, fish houses (fish landings, processing and packaging) and commercial fishing vessel dockage; it does not mean commercial marinas for the dockage of pleasure craft.
- Water dependent use means a use or portions of a use that can only be carried out on, in or adjacent to water areas because the use requires access to the water body.
- Water enhanced use means a use that is not a water dependent use but benefits economically or aesthetically by its location on the waterfront; examples include restaurants, hotels and residential uses.

**Section 4.** During the time this ordinance is in effect as specified herein, there shall be a moratorium upon the issuance of building permits, acceptance of development applications or issuance of development orders and development permits within unincorporated Monroe County concerning the redevelopment and conversion of marine facilities including commercial marinas and the working waterfront, except as provided herein.

**Section 5.** Exempt from this ordinance is development under an approved Conditional Use Permit, general maintenance, repair and/or safety improvements.

**Section 6.** Pursuant to its lawful authority and the pending legislation doctrine as set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2d DCA, 1980) the Board of County Commissioners hereby establishes the interim development regulations set forth in this Ordinance, which shall remain in full force and effect until the expiration of this legislation within one year of its effective date or whenever the plan and land development regulations become effective, whichever comes first.

**Section 7:** Until expiration of this Interim Development Ordinance no application for a building permit or development approval for any development or redevelopment that meets the criteria for review identified in Section 2 hereof, shall be granted pursuant to an application or request with a submittal date of March 1, 2005, or later.

**Section 8:** Any application for a building permit or development approval with a submittal date of February 28, 2005, or earlier shall be exempt from this Interim Development Ordinance.

**Section 9:** As of the effective date of this Ordinance no application for a building permit or development approval meeting the criteria for review identified in Section 2 hereof, shall be accepted or processed by the Growth Management Division, except applications exempt hereunder and development awarded a vested rights determination pursuant to Section 11 hereof.

**Section 10:** This Ordinance shall not be construed to prohibit the application for or issuance of a building permit or development approval for any development or redevelopment that does not meet the criteria for review identified in Section 2 hereof that is allowed pursuant to the Monroe County Land Development Regulations and the 2010 Comprehensive Plan.

**Section 11:** Any property owner adversely affected by the provisions of this Interim Development Ordinance may seek a determination that the owner's proposed development or redevelopment is vested against the provisions of this Interim Development Ordinance, by filing with the Director of Growth Management, together with an administrative fee in the amount of \$400, a vested rights application setting forth facts establishing the applicant met, prior to the date that this Ordinance is adopted by the Board of Monroe County Commissioners, the vested rights standards set forth in Section 9.5-181, Monroe County code. Such application must be filed no later than sixty (60) days after the effective date of this ordinance.

**Section 12:** The County Administrator is directed to have the Growth Management Division begin immediately preparing the draft text amendments and other supporting studies in cooperation with the Planning Commission in order to address the issue of redevelopment and conversion of marine facilities.

**Section 13.** If any section, subsection, sentence, clause, item, charge or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

**Section 14.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

**Section 15.** The ordinance is hereby transmitted to the Florida Department of Community



Affairs pursuant to Chapter 380, Florida Statutes and the DCA is requested to review and approve it by Immediate Final Order in accordance with F.S.120.569(2)(n), in recognition of the public importance of retaining the working waterfront, marine facilities, and public access to the waterfront, and to prevent the threat of further loss thereof as “an immediate danger to the public health, safety, or welfare”.

**Section 16.** This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission approving ordinance pursuant to Chapter 380, F.S.

**Section 17.** This ordinance shall stand repealed as of 11:59 p.m. on the 365th day after adoption of the Ordinance, unless repealed sooner by the Board of County Commissioners or upon the adoption of amendments to the comprehensive plan and land development regulations addressing public access and marine facilities.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2005.

Mayor Dixie Spehar	_____
Mayor Pro Tem Charles “Sonny” McCoy	_____
Commissioner Murray Nelson	_____
Commissioner George Neugent	_____
Commissioner David Rice	_____

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

BY \_\_\_\_\_  
Mayor Dixie Spehar

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

\_\_\_\_\_  
Deputy Clerk